

EXTENSIONS OF REMARKS

SWAP FUND TRANSACTIONS

HON. RICHARD E. NEAL

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1999

Mr. NEAL of Massachusetts. Mr. Speaker, today I am introducing legislation to eliminate a tax avoidance technique available only to the very wealthy. This technique involves the use of swap funds.

Like the legendary phoenix, a bird that lived for 500 years, burned itself to ashes on a pyre, and rose alive from the ashes to live again; this swap fund transaction has been closed down by Congress three times to date, only to see life again in the form of new and more exotic designs to get around whatever restrictions had been placed into law.

Legislation to shut down this particular practice was enacted in 1967, 1976, and again in 1997. In 1967, Congress enacted a law to prevent swap funds from being transacted in the form of a corporation, as was popular at the time. This led to the swap fund transaction being resurrected in the form of a partnership, which was closed down in 1976. Subsequently, the industry developed methods to get around both laws by manipulating the 80 percent test for investment companies. The Taxpayer Relief Act of 1997 closed these transactions down by broadening the definition of financial assets that are taken into account for purposes of the 80 percent test. Obviously, the point here is that three times Congress has acknowledged the tax avoidance potential of this transaction, and three times Congress has made a public policy decision to close this shelter down. And three times Congress has failed. We will not fail again.

Swap funds are designed to permit individuals with large blocks of appreciated stock to diversify their portfolio without recognizing gain and paying tax. In this transaction, a fund is established into which wealthy individuals with large blocks of undiversified stock transfer their stock. In exchange for the transferred stock, these individuals receive an equivalent interests in the fund's diversified portfolio. In effect, these individuals have now diversified their holdings by mixing their shares of stock with different shares of stock from other individuals, without having to sell that stock and pay tax on the gain like ordinary Americans.

The swap fund transaction is complicated, and is limited to individuals with large blocks of stock. For example, a recent offering was limited to subscriptions for \$1 million, although the general partner retained the right to accept subscriptions of lesser amounts. This, however, does not mean an individual with only a million dollars in stock could invest in the swap fund. In order to avoid Securities and Exchange Commission registration requirements, these transactions are often limited to sophisticated investors who under SEC regulations, according to a 1998 prospectus, must have total investment holdings in excess of \$5 million.

As outlined above, current law tries to stop swap funds involving a corporation or a partnership that is in investment company. An investment company is a corporation or partnership where the contribution of assets results in a diversification of the investor's portfolio, and more than 80 percent of the assets of which are defined by law as includable for purposes of this test.

In the most current form of the swap fund transaction, that limitation is avoided by holding at least 21 percent of assets in preferred and limited interests in limited partnerships holding real estate. In fact, the purpose of the fund is clearly identified by the prospectus, which states that "the value of the Private Investments will constitute at least 21% of the total value of the Fund's portfolio, so that the Fund will satisfy the applicable requirements of the Code and the Treasury Regulations governing the nonrecognition of gain for federal income tax purposes in connection with the contribution of appreciated property to a partnership." As in past years, the bill I am introducing addresses the specific transaction being used; that is, the bill would eliminate the latest avoidance technique by providing that such investments would be treated as financial assets for purposes of the 80 percent test.

The second part of this bill at long last recognizes the inadequacy of the above approach, given its 32 year record of failure. This section states that any transfer of marketable stock or securities to any entity would be a taxable event, if that entity is required to be registered as an investment company under the securities laws, or would be required to register but for the fact that interests in the entity are only offered to sophisticated investors, or if that entity is formed or availed of for purposes of allowing investors to engage in tax-free exchanges of stock for diversified portfolios.

The effective date of this legislation is for transfers after date of Committee action, with an exception for binding contracts signed prior to date of introduction. While it is clear that the Committee will decide on the appropriate effective date, I do not believe it would be fair to apply this legislation to contracts signed prior to the date that taxpayers were first on notice of a potential change in the law. This effective date is, by the way, similar to the effective date the Committee chose for the 1997 change.

For those taxpayers who react by rushing their deals, they should be on notice that I intend to attach this legislation to the first tax bill that emerges from the Committee on Ways and Means after September 1, 1999. For those who have technical suggestions to make to the legislation, it would behoove them for the same reason to analyze this bill carefully and make whatever technical suggestions they have as soon as they practically can.

Mr. Speaker, the life and death of this transaction is not simply another instance of American ingenuity and creativity which we can all admire. It is, in reality, a practical example of the need to seriously consider what generic

powers should be granted to the Department of the Treasury to close down certain tax shelters without waiting for Congress, which inevitably can only attempt to keep up with the most obvious techniques being utilized to minimize tax payments.

One of the great dangers I see on the horizon, Mr. Speaker, is that the proliferation of tax shelters will eventually lead to a severe backlash by Congress that may not be as well crafted as many, including myself, would like.

OFFICERS STEVE REEVES AND
STEPHEN GILLNER

HON. BOB BARR

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1999

Mr. BARR of Georgia. Mr. Speaker, those cynics who say America has no real heroes anymore have never heard the names Steve Reeves and Stephen Gillner.

Both men filled one of the most dangerous roles in the Cobb County Police Department by serving on its SWAT team. Late last month, both men gave their lives in a heroic effort to save an elderly woman.

Officers Gillner and Reeves were both devoted husbands and fathers. They were both active in their communities. Both had a record of putting their own lives at risk to help others.

Officer Gillner received an Officer of the Year nomination for pulling a man from a burning van. Reeves received awards for saving a family from a burning home and rescuing an officer from an armed suspect.

Every day, we are disappointed to see the sports figures and celebrities many look up to, letting us down. Officers Gillner and Reeves did not let us down. They lived their lives as quiet heroes; protecting lives, loving their families, and making it possible for the rest of us to enjoy the safety we all too often take for granted.

In life and death, these two brave officers taught all of us what it really means to be a hero. While nothing can erase their loss, we can take comfort in knowing they gave their lives doing a job they loved, and doing it well.

WORKFORCE SKILLS SHORTAGES

HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1999

Mr. DREIER. Mr. Speaker, I rise today to commend the Chairman of the Immigration Subcommittee, Representative LAMAR SMITH, for recognizing the important role technology companies play in our nation's economy, and holding a hearing on Thursday to investigate the workforce shortage affecting America's high-tech industries. The high-tech explosion experienced in the U.S. has created over 1

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million jobs since 1993 and produced an industry unemployment rate of 1.4 percent. In California alone, this technology explosion has made the Golden State number one in high-tech employment by creating 784,151 jobs and making up 61 percent of California's exports. As a result, our nation's economy has surged and the American people are enjoying the highest standard of living in history.

While our economy is strong, we must recognize that if cutting edge technology companies do not have access to growing numbers of highly skilled personnel, it will threaten our nation's ability to maintain robust economic growth and expanding opportunities. For the second year in a row, robust growth in technology in technology industries have placed significant strains on the H-1B visa program. Last year, these visas were increased to ensure that the scarcity of skilled workers not undermine the ability of the economy to grow. Unfortunately, the Immigration and Naturalization Service reached the visa cap in June leaving 42,000 visas outstanding. Additionally, there are currently over 340,000 unfilled positions in the high-tech industry, and the Department of Labor projects that this deficit will increase by 1 million workers in the next decade.

I believe that highly-skilled, temporary foreign workers are critical to filling a limited number of positions for which no qualified Americans are available. That is why I introduced the New Workers for Economic Growth Act of 1999 as the House companion for S. 1440 introduced by Senator PHIL GRAMM. This legislation increases the level of H-1B visas available for highly-skilled scientists and engineers to 200,000 for the years 2000-2002.

It is clear that education reform and worker training are essential to ensure that American citizens are able to take advantage of these positions. The fact is, half of the student graduating from American universities with doctorates in science, math and computer programming are foreign-born students. The lack of investment in educating Americans in these subject areas is a serious long-term problem that must be addressed. In the short-term, however, I believe a temporary increase in H1B admissions is warranted. I commend Chairman SMITH for exploring the current situation so that a workforce shortage does not threaten our vibrant economy.

WORKPLACE PRESERVATION ACT

SPEECH OF

HON. GREG WALDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 3, 1999

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 987) to require the Secretary of Labor to wait for completion of a National Academy of Sciences study before promulgating a study or guideline on ergonomics:

Mr. WALDEN. Mr. Chairman, I rise today in support of the Workplace Preservation Act and in support of American small business. All we're asking is for the Occupational Safety and Health Administration to delay implementation of a new workplace ergonomics rule until the National Academy of Science finishes

a study of the effects of workplace ergonomics.

The rule that OSHA wants to implement is conservatively estimated to cost Americans \$3.5 billion a year. As a small business owner, I am very concerned about how federal regulations affect people and their jobs. Too often the people who suffer are not only the small business owners, but also their employees. And the regulation being discussed by OSHA is indeed large. It could have harmful effects on the economies of the small towns that dot my district where there are not many choices of where to work. Often in Central, Southern, and Eastern Oregon, if you lose your job at the local tire store or construction company, there are no other employment choices.

The federal government has already played a role in driving the unemployment rate in Grant County to almost 17% in April of this year by halting access to the federal lands that dominate the landscape of Oregon. Now it wants to micro-manage small business? I believe that before the federal government implements a drastic increase in its interference in America's small businesses, it needs all the information it can get on ergonomics. It is not too much to ask OSHA to wait to implement its rule until we have a chance to examine the ergonomics study being performed by NAS at the request of Congress.

Mr. Chairman, I join the small business owners of America in thanking my friend from Missouri, Mr. Blunt, for his leadership on this important issue. I urge my colleagues to support this reasonable and pro small-business bill.

A TRIBUTE TO THE LATE ROSLYN MCGRUDER CLARK

HON. CARRIE P. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1999

Mrs. MEEK of Florida. Mr. Speaker, I rise today to pay tribute to the late Roslyn McGruder Clark, a native of Miami who passed away Saturday of a brain aneurysm at the age of 48.

Roslyn Clark was a precious asset to our community. Her enthusiasm for her work, her compassion for other people, and her dedication to public service speak to the very best tradition of police service.

Roslyn was simply an outstanding law enforcement officer. She worked hard, and she worked smart. Education was extremely important to her. She was a graduate of Miami's Jackson Senior High School. She held a Master of Science degree from Biscayne College, and had completed graduate course work at Florida Atlantic University and at the University of Miami.

Roslyn Clark's tremendous abilities were recognized by her superiors. She attained the rank of major and was the highest-ranked African-American female police officer in the Miami-Dade Police Department. Her task was to head the Northside Police Station in the Liberty City area of Miami, considered by many to be the most violent area in Dade County.

Roslyn Clark did not shrink from this challenge; she welcomed it. For she had grown up in this area. She knew the people, and she

knew the problems. Even more important, she was a talented leader who knew how to make the police force work for the community. She used every tool available to her—personnel, training, community groups, educators. She forged relationships with residents and young people. Because of her work and under her direction, the neighborhood began to improve. This is an important part of her legacy.

Major Roslyn McGruder Clark is survived by her husband, Edgar Clark, her son Keenan, her stepson Edgar Clark, Jr., and by her maternal grandmother, Mrs. Helen Ward. I extend to them, on behalf of our entire community, my heartfelt sympathy at their loss, which is our loss.

From this day forward, whenever men and women of determination and good will talk about those in our community who made a positive contribution, they will remember Roslyn Clark.

TWENTY-FIRST AMENDMENT ENFORCEMENT ACT

SPEECH OF

HON. DARLENE HOOLEY

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 3, 1999

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2031) to provide for injunctive relief in Federal district court to enforce State laws relating to the interstate transportation of intoxicating liquor:

Ms. HOOLEY of Oregon. Mr. Chairman, I rise to express my concerns about the impact of H.R. 2031 on small family-owned vintners and wine producers in my district.

This issue before us is much more complex than it seems on the surface. Of course, teens should not be able to order a case of beer from their home computers. Nor should they be able to mail order shipments of alcohol to their front door. Because of this, I will support this bill.

But we are voting on much more than this.

This bill basically states that federal courts might get involved when an adult visits a small family owned winery in person and purchases wine for their own consumption, then has that wine shipped home.

I see no reason why this transaction—which could still be prosecuted in a state court if it violated a state law—should be pushed into the federal courts.

We do not have the resources to use the federal courts to chase such violations of state law.

I hope to introduce stand alone legislation that would address my concerns and I ask my colleagues for their support.

Such an effort would be pro-small business, pro-tourism, and pro-family farmer.

JUDITH TAYLOR

HON. HEATHER WILSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1999

Mrs. WILSON. Mr. Speaker, I wish to bring to your attention the outstanding work of Judith Taylor.